OCT 2 5 2005

Docket No. 05-340

In The
Supreme Court of the United States

BOBBY LEN FRANKLIN, Desert Land Entry N-49548®
ROBERT LEE FRANKLIN, 20-Acre Assignment of Entry®
DONNA SUE OWENS, 20-Acre Assignment of Entry®

Plaintiffs-Appellants-*Petitioners*,

v.

UNITED STATES, et al.,

Defendants-Appellees-*Respondents*.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

SUPPLEMENTAL BRIEF TO PETITION FOR WRIT OF CERTIORARI

Bobby Len Franklin
Petitioner, *pro se* of Record
Desert Land Entries N-49548®, N-52292®
1417 N. Bel Air Drive
Mesa, AZ. 85201-2503
(480) 649-6422

SUPPLEMENTAL QUESTION PRESENTED

Supplemental to the *Question Presented* in the Petitioners' *Petition for Writ of Certiorari*:

Does the *full* Supreme Court of the United States have a duty to compel the lower Ninth Circuit Court(s) to abide by the Desert Land Laws of the United States, as it is written by Congress 43 USC §1165, as it is written by this Court in *Stockley, et al., v. United States*, 260 U.S. 532 (1923), for the national security of the United Sates and relief to the Katrina hurricane victims; and if so,

Should the *undisputed* "mineral in character" fraud upon the Court, perpetuated by the Interior Appellees and their noted past counsel, be reviewed and set aside, as required under the Administrative Procedures Act (APA) 5 USC §§701-706?

PARTIES TO THE PROCEEDINGS

The Petitioners, Plaintiffs-Appellants below, are:

1) ***Bobby Len Franklin***, Desert Land Entryman N-49548, which was consolidated by final order *IBLA 96-111, 96-163*, with his father Bobby Dean Franklin, Desert Land Entryman N-52292. The legal description of their consolidated entries is the *S.E. 1/4 of Section 16, T. 32 S., R. 66 E., Mount Diablo Meridian*, consisting of (a square) *160-acres*. Bobby Dean Franklin is not a party to the proceedings, due to his age and health problems. He is now 75-years old.
2) ***Robert Lee Franklin*** *individually* purchased a 20-acre Assignment in such consolidated entries, from his father Bobby Len Franklin, pursuant to 43 USC § 324, on October 11, 2002. Such Assignment is recorded in the lower courts and the Clark County Recorder's Office, with all State transfer taxes paid.
3) ***Donna Sue Owens***, *individually* purchased a 20-acre Assignment in such consolidated entries, from her brother Bobby Len Franklin, pursuant to 43 USC § 324, on August 23, 2002. Such Assignment is recorded in the lower courts and the Clark County Recorder's Office, with all State transfer taxes paid.

Respondents, Defendants-Appellees below, are:

1) ***UNITED STATES***, *Department of the Interior Board of Land Appeals* (IBLA), the final decision maker for such administrative (Interior) agency; and,
2) *Mark Morse, District Manager, Las Vegas District, Nevada, Bureau of Land Management* (BLM), who has the ministerial duty to issue public land patents in such District, 43 CFR § 1862.6.

I. JURISDICTION

On 10/17/05, "a waiver of right of Respondent - United States, et al. to respond", was filed. The jurisdiction submitted in the Petition for Writ of Certiorari is unopposed and undisputed, pursuant to Supreme Court Rule 15.

II. INTERVENING MATTER

Pursuant to Supreme Court Rule 15.8, the Petitioners' writ of certiorari was filed on June 15, 2005. Subsequently, the Katrina hurricane disaster occurred, which may bankrupt such hurricane victims, including most United States citizens. The attached Appendix ("App") I to XII clearly shows such disaster can be turned around into a God given Blessing, providing the Ninth Circuit Court(s) are compelled to abide to the desert land law codification 43 USCA §1165, as it is written by this Court in *Stockley, et al., v. United States*, 260 U.S. 532 (1923). The supplemental facts in descending chronological order are:

1. On 10/7/05, the clerk returned application to Justice O'Conner, for the *full* Court to consider. Please see, App. I.

2. On 9/29/05, Applicants served and attempted to file their supplementary application to Justice O'Conner, praying she command the Ninth Circuit Court(s) to abide to such desert land laws, as written, for sake of this nation, which included the email sent to President Bush, Dick Cheney, the GOP committee, and certain members of Congress. Please see, App. II-VI, Id. "Exhibit 1". There was no response.

3. On 6/17/05, Applicants served and attempted to file their amended application to Justice O'Conner, praying she recognize her Ninth Circuit Court(s) have judicial jurisdiction to virtually all desert lands in America, and are blockading citizens of there desert farming rights, contrary to

the noted desert land law. App. VII-X. Attached thereto, is 43 USC § 323 *Application to certain States*, with Codification to the act of March 3, 1891, 43 USC §1165 *patents*.... Please see, App. XI-XII, "Exhibit 2".

ARGUMENT

The Petitioners – Applicants are simply stating that if the Ninth Circuit Court(s) were compelled to abide by the Desert Land Entries law 43 USC § 321 et seq., as it is written by this Court in *Stockley*, the Interior - Respondents would perform their ministerial duties, and every homeless Katrina victim could have "*an opportunity to wealth and happiness*", as described in App. IV-V, "*Exhibit 1*".

Such laws have been written for many years, and should be exercised, to achieve national prosperity, and prevent our great nation from the obvious poverty and chaos to come.

III. SUPPLEMENTAL MATTER

On 10/17/05, the U.S. Solicitor General filed a waiver to respond to the Petition for a writ of certiorari, on behalf of the Interior Respondents. Such Petition alleged the Interior Respondents and their past counsel misrepresented fraud on the lower courts. See, footnote 1, page 1 of Petition. Pursuant to Supreme Court Rule 15.2, such "mineral in character" fraud is unopposed and undisputed. For convenience of the Court, the supplemental facts in ascending order are:

1. On 8/18/88, pursuant to 43 USC § 322 *Desert lands defined*, and its BLM regulation 43 CFR 2520, two *non-mineral* affidavits were filed in the DLE N-49548 case file, with BLM. See, App. XIII-XIV.

2. On 10/13/88, pursuant 43 CFR 2520, the BLM District Manager (unsuccessfully) rejected such entry, contending

such DLE was not "*non-mineral* in character". See, App. XV.

3. On 10/18/88, pursuant to 43 USC § 322, 43 CFR 2520, Bobby Franklin timely filed appeal with the IBLA, contending his DLE was "*non-mineral* in character". See, App. XVI-XVIII.

4. On 5/24/90, pursuant to 43 CFR 2520, the BLM District Manager (unsuccessfully) contended to IBLA that such desert land is "*mineral in character*", because of the sand and gravel dirt there. See, App. XVIII-XIX.

5. On 8/27/90, pursuant to 43 CFR 2520, after full argument from both sides, the IBLA *finally* "*reversed*" the BLM's "*mineral in character*" contest, as reported in *Bobby L. Franklin*, 116 IBLA 29 (1990), and the *Interior Decisions* of 1990. See, App. XX-XXIV.

ARGUMENT

Pursuant to the Administrative Procedures Act 5 USC §§ 701-706, the unopposed and undisputed "mineral in character" fraud on the court, misrepresented by the Interior Respondents and their past counsel, against Appellants' statutory right to confirm and patent their land titles, should be briefed on the merits, and criminally prosecuted by the Department of Justice, Paul D. Clement, counsel of Record.

IV. CONCLUSION

Based on the foregoing, the unopposed and undisputed Petition for Writ of Certiorari should be granted, and a schedule order set for the briefs on the merits.

Pursuant to 28 USC § 1746, we state under penalty of perjury that the foregoing is true and correct. Executed on this 21st day of October, 2005.

s/BOBBY LEN FRANKLIN
Desert Land Entries N-49548®, N-52292®
1417 N. Bel Air Drive
Mesa, AZ. 85201-2503
(480) 649-6422 or 773-7787
(Appellant *pro se* of Record)

s/ROBERT LEE FRANKLIN
20-Acre Assignment of Entry®
1500 W. 8th Street, #28
Mesa, AZ. 85201
(Appellant *pro se*)

s/DONNA SUE OWENS
20-Acre Assignment of Entry®
1417 N. Bel Air Drive
Mesa, AZ. 85201
(480) 703-3655
(Appellant *pro se*)

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APPENDIX

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[INTERVENING MATTER]

Supreme Court of the United States
Office of the Clerk
Washington, DC 20543-0001

October 7, 2005

Mr. Bobby Len Franklin
Desert Land Entries N-49548®, N-52292®
1417 N. Bel Air Drive
Mesa, AZ 85201-2503

Re: Bobby Len Franklin, Robert Lee Franklin, and Donna Sue Owens v. United States, et al. No. 05-340

Dear Mr. Franklin,

The "application" received October 7, 2005, is herewith returned. The papers appear to request that Justice O'Conner consider the merits of the above-entitled petition for a writ of certiorari. A petition for a writ of certiorari is considered by the full Court.

Very truly yours,

WILLIAM K. SUTER, Clerk .

s/Christopher W. Vasil
Chief Deputy Clerk

Docket No. 05-340

In The

SUPREME COURT OF THE UNITED STATES

BOBBY LEN FRANKLIN, Desert Land Entry N-49548®;
ROBERT LEE FRANKLIN, 20-Acre Assignment®;
DONNA SUE OWENS, 20-Acre Assignment of Entry®,

Plaintiffs-Appellants-Applicants,

vs.

UNITED STATES, Department of the Interior
Board of Land Appeals;
District Manager, Las Vegas District, Nevada,
Bureau of Land Management,

Defendants-Appellees-Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

---

SUPPLEMENTARY AMENDED SUPREME COURT RULE 22 APPLICATION TO JUSTICE O'CONNER

Bobby Len Franklin
Petitioner, *pro se* of Record
Desert Land Entries N-49548®, N-52292®
1417 N. Bel Air Drive
Mesa, AZ. 85201-2503
(480) 649-6422

{**RECEIVED**}
{**OCT 7 – 2005**}
{Supreme Court Clerk}

On June 16, 2005, the Petitioners served the Respondents and attempted to file their *Amended Supreme Court Rule 22 Application To Justice Sandra Day O'Conner*, which sought Justice O'Conner to review the statutory merits of this appeal and compel the Ninth Circuit Court(s) to abide with the Desert Land Entries law, as it is written by this Court in its landmark decision *Stockley, et al., v. United States*, 260 U.S. 532 (1923), and is attached herewith. Subsequently, the Katrina disaster occurred in the Gulf region.

On September 5, 2005, Petitioner - Bobby Franklin emailed president Bush; Dick Cheney; the GOP committee; and, certain members of Congress, his God sent Dream to turn such natural disaster into a Blessing, under the Desert Land Entries law, as it is written. Such email follows this Supplementary as "Exhibit 1".

Based on national security and justice to Petitioners, Justice O'Conner is requested to consider the merits of this appeal, and expedite the Ninth Circuit Court(s) an instruction to abide with the Desert Land Entries law of the United States, as it is written in *Stockley*.

Respectfully submitted by,

s/Bobby Len Franklin 9 - 29 - 05

BOBBY LEN FRANKLIN
Desert Land Entryman N-49548®, N-52292®
1417 N. Bel Air Drive
Mesa, AZ. 85201-2503
(480) 649-6422
(Appellant *pro se* of Record) ----------

[INTERVENING EVENT]

September 5, 2005 -

Dear President Bush,

Pursuant to the Desert Land Entries law of the United States 43 USC 321 et seq., I have constructed a plan process to place 125,000 homeless families (500,000 citizens) from New Orleans, into a home of their own, each family on their own 20-acre farm, in the 13 western States 43 USC 323, with virtually no funding from the government, which in fact would feed the entire world within a few years!

My plan goes like this:

1. Every family capable of turning water valves, driving farm equipment, and who are citizens of requisite age would qualify 43 USC 321. All public lands exclusive of timber lands and mineral lands in the desert shall be deemed "desert lands" 43 USC 322. Assignments on each farm, to individuals, is legal for life, to pay off debts 43 USCA 324!

2. Every District Office of the Bureau of Land Management in such western States shall expedite each and every Desert Land Entry application, and place each DLE into an association, adjacent to one another, to form communities in the desert!

3. The "rural" communities formed may lien their 20-acres to purchase their mobile homes or houses, and to drill water wells in designated places, for their now created irrigation district. Pipelines or canals shall be dug to connect each 20-acre farm unit together, in each irrigation district or formed community!

4. The "urban" communities formed in a city or county may lien their 20-acres to purchase their homes, and to purchase or credit "effluent" (recycled) water from the city or county sanitation district(s). Pipelines or canals shall be dug to connect each 20-acre farm unit together!

5. All satisfactory 20-acre farm units shall be issued a land patent from the BLM, and all suspended entries shall be issued the same 43 USC 1165.

After put into action, this plan would in deed feed the entire world, while giving every homeless American an opportunity to wealth and happiness!

Please don't place anymore people to live below sea level.

Sincerely,

BOBBY FRANKLIN
Desert Land Entries N-49548, N-52292
1417 N. Bel Air Drive
Mesa, AZ. 85201
(480) 649-6422
http://by106fd.bay106.hotmail.msn.com/cgi-bin/compose?mailto=1&msg=FCD9FD40-CA1B-4812-BDE1-D0F3A55D9937&start=0&len=7835&src=&type=x&to=DLEPatent@msn.com&cc=&bcc=&subject=&body=&curmbox=00000000-0000-0000-0000-000000000001&a=5701d3d450f751839c9a921be255bf439ed57e42b494d0e465108538b3cf82b9

"Exhibit 1"

CERTIFICATE OF SERVICE

I certify under penalty of perjury 28 USC 1746 that a copy of this *SUPPLEMENTARY AMENDED SUPREME COURT RULE 22 APPLICATION TO JUSTICE SANDRA DAY O'CONNER* and all attachments was served upon the named Interior Appellees and their counsel of record by U.S. mail, postage prepaid, on the persons listed below:

Name	Address
Officer MARK MORSE District Manager Las Vegas District, Nevada Bureau of Land Management;	4701 N. Torrey Pines Drive Las Vegas, NV. 89130 (702) 515-5000 (Defendant/Appellee)
U.S. Department of the Interior Board of Land Appeals;	801 N. Quincy St., #300 Arlington, VA. 22203 (703) 235-3750 (Defendant/Appellee)
Elizabeth Ann Peterson U.S. Department of Justice Environmental & Natural Resources Division, Appellate Section;	P.O. Box 23795 L'Enfant Plaza Station Washington, D.C. 20026 (202) 514-3888 (Latest Attorney of Record)
U.S. Solicitor General Room 5614 Department of Justice	950 Pennsylvania Ave., NW Washington, D.C. 20530 (202) 514-2203

s/BOBBY LEN FRANKLIN
(Appellant *pro se* of Record)
(480) 649-6422

9/30/05
Date Executed

RECEIVED - - OCT – 7 2005
OFFICE OF THE CLERK – SUPREME COURT, U.S.

Docket No. 05-340

In The

SUPREME COURT OF THE UNITED STATES

BOBBY LEN FRANKLIN, Desert Land Entry N-49548®;
ROBERT LEE FRANKLIN, 20-Acre Assignment®;
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vs.

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On Petition for Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

AMENDED SUPREME COURT RULE 22 APPLICATION TO JUSTICE SANDRA DAY O'CONNER

Bobby Len Franklin
Petitioner, *pro se* of Record
Desert Land Entries N-49548®, N-52292®
1417 N. Bel Air Drive
Mesa, AZ. 85201-2503
(480) 649-6422

APPLICATION TO JUSTICE SANDRA DAY O'CONNER

Pursuant to Supreme Court Rule 22, Justice O'Conner is urgently requested to consider the merits of this appeal, which clearly shows that the Ninth Circuit court(s) have rebelliously disregarded their judicial duty of mandamus law, which has created an arbitrary blockade against any or all Desert Land Entries 43 USCA § 321 *et seq.* of their individual farming rights on federal public lands in the arid desert.

The Ninth Circuit court(s) fail to consider, address, and disregards the purchased "receiver's receipt" issued to Franklin some 17-years ago, which is the only *instrument* for consideration under the following mandatory law:

1. The Ninth Circuit court(s) fail to consider, address, and disregards the Appellees' ministerial *patent* duty 43 CFR § 1862.6, which was administratively exhausted for judicial review;
2. The Ninth Circuit court(s) fail to consider, address, and disregards the expressed proviso by Congress in 43 USCA § 1165, which was administratively exhausted for judicial review; and,
3. The Ninth Circuit court(s) fail to consider, address, and arrogantly disregards the landmark decision of this Court in *Stockley, et al., v. United States*, 260 U.S. 532 (1923), which was administratively exhausted for judicial review.

The Ninth Circuit court(s) have undermined all individual activity in desert agriculture, while disregarding the Appellants' statutory right to judicial trial under the due process of law. Can the Ninth Circuit court(s) get away from abiding to Congress and this Highest Court of this land?

In essence, the Ninth Circuit court(s) have arbitrarily destroyed citizens of their 43 USC § 321 *Entry right generally*; of their 43 USC § 322 *Desert lands defined*; of their 43 USC § 323 *Application to certain States*; and, of

their 43 USC § 324 *Assignment of entries* – by recklessly disregarding their mandatory right to ever *patent* their suspended entries 43 USC § 1165. The Ninth Circuit court(s) have judicial jurisdiction over the seven of thirteen western States 43 USC § 323, which includes all of the "Mohave/Mojave Desert". Such arid desert will remain a wasteland, void to irrigation farming purposes for individual citizens, until the Ninth Circuit court(s) are compelled to abide by the stare decisis mandamus law as it is written.

Justice Sandra Day O'Conner should consider the merits of Appellants' *Petition for Writ of Certiorari*, consider the Appellants' statutory right to patent their consolidated *Desert Land Entries* and their *Assignments*, and compel the Ninth Circuit court(s) their judicial duty to abide by such stare decisis *Desert Land Entries* law that they have so recklessly disregarded to address, enforce or protect.

s/Bobby Len Franklin 6 - 16 - 05
Desert Land Entryman N-49548®, N-52292®
1417 N. Bel Air Drive
Mesa, AZ. 85201-2503
(480) 649-6422
(Appellant *pro se* of Record)

s/Robert Lee Franklin 6 - 16 – 05
20-Acre Assignment of Entry®
1500 W. 8th Street, #28
Mesa, AZ. 85201
(480) 835-1343
(Appellant *pro se*)

s/Donna Sue Owens 6 - 16 - 05
20-Acre Assignment of Entry®
1417 N. Bel Air Drive
Mesa, AZ. 85201-2503
(480) 703-3655
(Appellant *pro se*)

CERTIFICATE OF SERVICE

I certify under penalty of perjury 28 USC 1746 that a copy of this *AMENDED SUPREME COURT RULE 22 APPLICATION TO JUSTICE SANDRA DAY O'CONNER* was served upon the named Interior Appellees and their counsel of record by U.S. mail, postage prepaid, on the persons listed below:

Name	Address
Officer MARK MORSE District Manager Las Vegas District, Nevada Bureau of Land Management;	4701 N. Torrey Pines Drive Las Vegas, NV. 89130 (702) 515-5000 (Defendant/Appellee)
U.S. Department of the Interior Board of Land Appeals;	801 N. Quincy St., #300 Arlington, VA. 22203 (703) 235-3750 (Defendant/Appellee)
Elizabeth Ann Peterson U.S. Department of Justice Environmental & Naturai Resources Division, Appellate Section;	P.O. Box 23795 L'Enfant Plaza Station Washington, D.C. 20026 (202) 514-3888 (Latest Attorney of Record)
U.S. Solicitor General Room 5614 Department of Justice	950 Pennsylvania Ave., NW Washington, D.C. 20530 (202) 514-2203

*

By: s/Bobby Len Franklin
BOBBY LEN FRANKLIN
(Appellant *pro se* of Record)
(480) 649-6422

6 - 17 - 05
Date Executed

From the U.S. Code Online via GPO Access
[wais.access.gpo.gov]
[Laws in effect as of January 7, 2003]
[Document not affected by Public Laws enacted between
January 7, 2003 and February 12, 2003]
[**CITE: 43USC323**]

TITLE 43--PUBLIC LANDS

CHAPTER 9--DESERT-LAND ENTRIES

Sec. 323. Application to certain States

Sections 321 to 323, 325, and 327 to 329 of this title **shall only**
apply to and take effect in the States of California, Colorado,
Oregon, Nevada, Washington, Idaho, Montana, Utah,
Wyoming, Arizona, New Mexico,
and North and South Dakota.

(Mar. 3, 1877, ch. 107, Secs. 3, 8, 19 Stat. 377;
Mar. 3, 1891, ch. 561,
Sec. 2, 26 Stat. 1097; Jan. 6, 1921, ch. 12, 41 Stat. 1086.)

Codification

Section is from the first clause of section 3 of act Mar. 3, 1877, and the first clause of section 8 of act Mar. 3, 1877, as **added by act Mar. 3, 1891**.

The second clauses of section 3 and 8 of act Mar. 3, 1877, are incorporated in the second paragraph of section 322 and section 325 of this title, respectively.

The first clause of section 3 of act Mar. 3, 1877, provided that ``this act shall only apply to and take effect in the States of California, Oregon and Nevada, and the Territories of Washington, Idaho, Montana, Utah, Wyoming, Arizona,

New Mexico and Dakota".

The first clause of section 8 of act Mar. 3, 1877, as added by act **Mar. 3, 1891**, provided for the inclusion of Colorado. The Territories of Washington, Idaho, Montana, Utah, Wyoming, Arizona, New Mexico and Dakota have become States since the enactment of act Mar. 3, 1877, the Territory of Dakota being divided, to form the States of North and South Dakota.

Section as Unaffected by Submerged Lands Act

Provisions of this section as not amended, modified or repealed by the Submerged Lands Act, see section 1303 of this title.

Section Referred to in Other Sections

This section is referred to in sections **321, 322, 324**, 326, 328, 329, 333, 641, 1303 of this title; title 16 section 460iii-2.

(Patent)
"Exhibit 2"

Form 2520-1 UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT
DESERT LAND ENTRY APPLICATION
AUG 18, 1988, DLE-N-49548
(application pages are omitted as undisputed and irrelevant)

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT
STATEMENT OF WITNESS
AUG 18, 1988, DLE N-49548

I, JESUS V. MUNOZ, c/o 182 London Ave., Las Vegas, NV. 89109, certify that I am well acquainted with the character of each and every legal subdivision or portion of the land described in the foregoing application, which said application has been read to me; that I became acquainted with said land by personal and careful examination of each and every legal subdivision or portion thereof on August 14th, 1988; that I have been acquainted with it for about 3-years; that my knowledge of the land is such as to enable me to testify understandingly concerning it; that same is *desert* **nonmineral** *land*; and that each and every statement made by applicant in the foregoing application as to the condition, character, and situation of said land is true on my own personal knowledge; and I further state that I am not interested in any way or manner, directly or indirectly, present or prospective, in the applications in support of which this statement is made, nor in the land itself, nor in any title thereto which may be acquired by said applicant or any other person, and that I signed this statement in the land district in which the above-described land is located.*
DATED, Aug. 14th, 1988 ---------- s/Jesus V. Munoz

Form 2520-1 UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT
STATEMENT OF WITNESS
AUG 18, 1988, DLE N-49548

I, JON E. MATTHEWS, 65 E. Hacienda, Las Vegas, NV. 89119, certify that I am well acquainted with the character of each and every legal subdivision or portion described in the foregoing application, which said application has been read to me; that I became acquainted with said land by personal and careful examination of each and every legal subdivision or portion thereof on August 14th, 1988; that I have been acquainted with it for about 1-year; that my knowledge of the land is such as to enable me to testify understandingly concerning it; that same is desert nonmineral land; and that each and every statement made by applicant in the foregoing application as to the condition, character, and situation of said land is true of my own personal knowledge; and I further state that I am not interested in any way or manner, directly or indirectly, present or prospective, in the applications in support of which this statement is made, nor in the land itself, nor in any title thereto which may be acquired by said applicant or any other person, and that I signed this statement in the land district in which the above-described land is located.*

DATED, 8-14-88 - - - - - - - - - - - - - - - - s/ Jon E. Matthews

*Title 18, USC, Section 1001, makes it a crime for any person knowingly and willfully to make to any department or agency of the United States any false, fictitious, of fraudulent statements or representations as to any matter within its jurisdiction.

(Page 7 of 7in DLE application)

United States Department of the Interior
BUREAU OF LAND MANAGEMENT
LAS VEGAS DISTRICT OFFICE
4765 Vegas Drive
P.O. Box 26569
Las Vegas, Nevada 89125

DLE N-49548
43 CFR 2520
(NV-050.1)

OCT 13, 1988

CERTIFIED MAIL NO. 13987
RETURN RECEIPT REQUESTED

DECISION

Bobby L. Franklin :
P.O. Box 3385 : Desert Land Entry
Bullhead City, AZ. 86430 :

APPLICATION REJECTED

Regulations contained under **43 CFR 2520.0-8(a)(1)** state in part:... "in order for public-lands to be subject to entry under the desert land law, such public lands must not only be irrigable but also surveyed, unreserved, un-appropriated, **non-mineral in character**, ..." The public lands affected by your DLE filing N-49548, are appropriated (by mining claims) and thereby rendered unsuitable under the Desert Land Act and not subject to disposition. Your desert land application is hereby rejected for the above reason.

Sincerely yours,
s/Ben F. Collins
District Manager

1 Enclosure

10-18-88
BOBBY L. FRANKLIN
P.O. Box 3385
Bullhead City, AZ. 86430

Bureau of Land Management
Las Vegas District Office;
Regional Solicitor, Pacific Southwest Region
U.S. Department of the Interior

NOTICE OF APPEAL

DLE N-49548
43 CFR 2520 * 43 USC §322
(NV-050.1)

Dear Gentlemen,

Reasons, written arguments, &/or briefs will be attached and will follow this document.

Thank You,
s/Bobby L. Franklin

(Page 1 of 5 on appeal)

I. Un-appropriated

Eight individuals recorded mining claims on the entirety of sections 9 & 16, in 1982, on the same day, at the same time. They also have the same attorney: Marshall S. Ashcroft, c/o *Leonard Gang*, 415 So. 6th St., #101, Las Vegas, NV. Four of these eight individuals also applied for *Mineral Patent* #N-46678 on April 30, 1987, for these two square miles of land, that is 1,280 acres of valuable land in Laughlin, Nevada.

I state that there has been no physical labor or mining production on this land. It definitely doesn't meet the "Marketability" or "Prudent Man Test", for mining claims or mining patents. The law reads in: "Staking a Mining Claim

on Federal Lands" (U.S.D.I.B.L.M.) "To Patent or Not to Patent":
"*If the claim is invalid, it will be cancelled and the claimant will forfeit all rights to the claim.*" Therefore, due to the long period of time this land has been under invalid mining

(Page 2 of 5 on appeal)

claim(s) (5-years), and long, un-timely period of time it has been under an application for a mineral patent (N-46678), I am challenging the law to either (a) forfeit all rights to the claimants, or (b) grant full patent to the claimants.

I am challenging this law only because I have applied for 80-acres (see enclosed) of irrigable land for agriculture (DLE). This land area is right next to the Clark County Agriculture Project that is irrigating hundreds of acres and is growing bermuda grass hay. My source for water is the Clark County Sanitation District, who is anxious to sell me effluent water for my purposes, as well as theirs. This 80-acres is in a short distance from the effluent water source but, it is in part of the 1,280-acres that have been applied for a Mineral Patent.

The 80-acre farm unit project would be an asset to the community, Clark County, Nevada, and the United States, under conservation of natural resources.

(Page 3 of 5 on appeal)

I state there is no mining production or valuable minerals on section 16. I state that, by law, I need to be granted entry on my DLE, for the 80-acres, as I cannot put this development farm project on hold indefinitely.

(Page 4 of 5 on appeal)

II. <u>Non-Mineral</u>

As to whether or not my 80-acres that I applied for (DLE) would interfere with ***sand and gravel*** production, I will point out: that, besides the few small incorporated communities, there is hundreds of miles, in any direction, on any highway,

of un-developed, BLM land that very rich in ***sand and gravel dirt.***

Sincerely Yours,
s/Bobby L. Franklin

(Page 5 of 5 on appeal)

UNITED STATES DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT
LAS VEGAS DISTRICT OFFICE
4767 Vegas Drive
P.O. Box 26569
Las Vegas, NV. 89126

In Reply Refer To:
DLE N-49548
43 CFR 2520
(NV-054)

Memorandum **May 24, 1990**

To: Norm Schwab, Board of Land Appeals, Office of the Secretary
From: District Manager, Las Vegas
Subject: Desert Land Entry Application N-49548

This memorandum will confirm your telephone conversation of Monday, May 21, 1990 with Tom Cook of my minerals staff. In answer to your questions:

1. The subject lands were not classified regarding their suitability for desert land entry. It was believed that the possessory right of the mining claimants constituted an "appropriation" of the lands and, as

such, the lands were not open to entry under the desert land laws.

2. A final certificate *was* issued for mineral patent application N-46678 and the case file was forwarded to this office for the validity examination of the mining claims. In U.S. v. Harper, 8 IBLA 364 (1972), the Board said, "The issuance of a final certificate on a mineral entry does not impart that discovery of a valuable mineral has been made ... but rather only that the proper papers and fees have been submitted." The mineral patent application was withdrawn after a *GAO auditing team* inspected the claims in May, 1988. Had the mineral patent application not been withdrawn, my minerals examiners would not have clear-listed the mining claims for patent, but would have recommenced the initiation of contest proceedings against the claims.
3. It is the opinion of my minerals examiners that the subject lands are prospectively valuable (PV) for common variety *sand and gravel* and, as such, are ***mineral in character***. They have not yet prepared an official mineral in character report for the subject lands. In order to be *subject to entry* under the desert land laws, public lands must be non-mineral in character. Even a large deposit of good quality gravel precludes entry. Guy Curtis, A-28140 (January 26, 1960); Norma L. McBride, 73 IBLA 165 (1983).

If you have any further questions , please contact Mark Chatterton at FTS 598-5000.

(Page 1 of 1)

United States Department of the Interior
OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF LAND APPEALS
4015 Wilson Boulevard
Arlington, Virginia 22203

BOBBY L. FRANKLIN

IBLA 89-35 Decided **August 27, 1990**

Appeal from a decision of the District Manager, Las Vegas District, Nevada, Bureau of Land Management, rejecting **desert land entry** application N-49548.

Reversed and remanded.

1. *Desert Land Entry*: Applications - Desert Land Entry: *Lands Subject To* - Mining Claims - Location - *Segregation*

   A decision rejecting a desert land entry application on the ground that the land is appropriated by unpatented mining claims will be reversed where a final certificate of mineral entry has not been issued for the land at the time the desert land entry application was filed.

APPEARANCES: Bobby L. Franklin, pro se
OPINION BY ADMINISTRATIVE JUDGE KELLY

Bobby L. Franklin has appealed from a decision of the District Manager, Las Vegas District, Nevada, Bureau of Land Management (BLM), dated October 13, 1988, rejecting his desert land entry (DLE) application, N-49548, stating "the public lands affected by your DLE filing N-49548, are appropriated (by mining claims) and thereby rendered

unsuitable under the Desert Land Act and not subject to disposition."

In his statement of reasons for appeal, appellant challenges the propriety of the decision on the basis that there has been no physical labor or mining production on the land in question over the past 5 years. Although there were multiple filings of mining claims and a mineral patent application (N-46678) filed involving 1,280 acres of valuable land in Laughlin, Nevada, he asserts nothing has been done to work these claims and the development of his DLE should not be held up indefinitely.

The record shows that appellant filed DLE application N-49548 with BLM on August 18, 1988, pursuant to 43 USC §321 (1982). The application described 80 acres of land located in the SE1/4 of sec. 16, T. 32 S., R. 66 E., Mount Diablo Meridian, Clark County, Nevada. On the same date appellant filed a protest of mineral patent application N-46678 which had been previously filed with BLM may 27, 1987, by J. H. Edgar et al., for the Rojas Nos. 1-8 placer mining claims covering approximately 1,231.52 acres of public land in the same area in T. 32 S., R. 66 E.

BLM records confirm that the patent applicants submitted the required proofs, paid the filing fees, and deposited the required purchase money for the mineral entry final certificate for these Rojas Nos. 1-8 claims October 3, 1988. On November 28, 1988, BLM issued a *decision* noting that the mineral entry was *allowed* and the *final certificate* was issued effective that date. By letter of April 17, 1989, the applicants requested that mineral patent application N-46678 be withdrawn in its entirety because the company that was going to purchase black sands from the claims had gone out of business. BLM accepted the withdrawal request and the

mineral entry involving the Rojas claims was cancelled as of April 17, 1989. [1]

The Board has noted that classification of the land as suitable for entry pursuant to section 7 of the Taylor Grazing Act "is a prerequisite to the approval of all entries" made under the desert land laws. 43 CFR 2400.0-3. [2] James A. Maleski, 102 IBLA 175, 180 (1989). Because no DLE applications may be allowed until the land has been classified as suitable for such entry, BLM must first look to see whether or not the land is classified or should be classified as open to DLE. In this instance the lands have not been previously opened to entry under the desert land laws. Although appellant's application also serves as a petition for classification where the land has not been classified, that classification determination has yet to be made by BLM this case. [3]

However, irrespective of the lack of classification, BLM attempted to dispose of the application on the lack of availability of the land due to the conflicting mining claims

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[1] By a decision, dated May 2, 1989, BLM accepted the applicants withdrawal of the mineral patent application and cancelled the mineral entry which included Rojas Nos. 1-8 placer claims.

[2] Characteristics of land subject to disposition under the Desert Land Act are set forth in 43 CFR 2520.0-8. In Departmental regulation 43 CFR 2400.0-3(a), BLM notes that classification pursuant to 43 USC §315(f) (1982), is a prerequisite to approval of a DLE under 43 CFR Part 2520. Under 43 CFR 2521.2, an application must include a petition for classification unless the lands described in the application have been opened for disposition under the desert land laws. See generally 43 CFR Part 2450. This Board has affirmed the rejection of DLE applications on the ground that the land had not been classified as suitable for entry. See Duella M. Adams, 70 IBLA 63 (1983).

[3] Section 16 of the DLE application specifically provides an alternate petition for classification stating: "If the lands described in this application have not been classified as suitable for desert entry pursuant to the provisions on Section 7, of the Taylor Grazing Act of June 28, 1934, as amended, (43 CFR 315F), and the requirements of the regulations in 43 CFR Part 2400, please consider the application as a petition for such classification."

of record. BLM rejected appellant's application, stating: "Regulations contained under **43 CFR 2520.0-8(a)(1)** state in part: **[I]n order for public lands to be *subject to entry* under the desert land law, such lands must not only be irrigable but also surveyed, unreserved, unappropriated, *nonmineral in character* * * *.**"

[1] Although BLM has not made an official determination based on a mineral report that the lands are, in fact, "mineral in character," BLM may have based its rejection of appellant's DLE in part on a presumption to that effect because of placer mining claim filings and a mineral patent application on record in the same area. However, this Board has recently noted that the mere fact of location of a mining claim does not establish the mineral character of the land. Nancy M. Swallow, 112 IBLA 321, 323 (1990), and cases cited therein. In Swallow we held that where BLM itself does not recognize the land described by DLE applications to be mineral in character, *applicants are not precluded from entering this land under the desert land law for this reason.* See California v. Rodeffer, 75 I.D. 176, 179 (1968). *We find no clear evidence in the record to support the conclusion that the land in question is **mineral in character**.*

As to BLM's conclusion that the lands are appropriated by mining claims, we have repeatedly recognized that longstanding Departmental precedent makes it clear that a mining claim *segregates* land from entry by others when a final certificate of mineral entry has been issued. Nancy M. Swallow, supra; See also Melvin Helit, 110 IBLA 144, 149-50 (1989); Scott Burnham, 100 IBLA 94, 110, 94 I.D. 429, 437 (1987). In the case at hand, the record is clear that, as of August 18, 1988, the date the DLE application was filed, no final certificate of mineral entry had issued. Accordingly, we find the lands in question were not appropriated at the time the DLE application was filed.

For the above reasons, we conclude that BLM's decision of October 13, 1988, should be *reversed*. Since the mineral patent application has since been withdrawn and the mineral entry cancelled, BLM should reconsider appellant's application and determine whether the land should be classified as open to DLE.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from ***is reversed*** and the case is remanded to BLM *for action consistent with this opinion.*

s/John H. Kelly
Administrative Judge

I concur:
s/Franklin D. Arness
Administrative Judge

116 IBLA 31

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1990 - INTERIOR DECISIONS

DESERT LAND ENTRY – Continued- (43 USC 321 et seq.)

LANDS SUBJECT TO - - - Continued – (43 CFR 2520)
(43 USC §322)

A decision rejecting a desert land entry application on the ground that the land is appropriated by unpatented mining claims will be reversed where a final certificate of mineral entry has not been issued for the land at the time the desert land entry application was filed.

Bobby L. Franklin, 116 IBLA 29 (Aug. 27, 1990)